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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92064160
Party	Defendant Terrence R Wall Revocable Trust U/A/D 10/27/92
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Submission	Motion to Dismiss - Rule 12(b)
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Attachments	URBAN VILLAGE Motion to Dismiss.pdf(164071 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re the Matter of U.S. Reg. No. 3,150,251
For Mark: URBAN VILLAGE

URBAN VILLAGES, INC.

Petitioner,

Cancellation No. 92064160

v.

TERRENCE R. WALL REVOCABLE TRUST,

Respondent.

MOTION TO DISMISS

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and Section 503 of the Trademark Trial and Appeal Board Manual of Procedure, respondent Terrence R. Wall Revocable Trust ("Respondent") moves the Board to dismiss petitioner Urban Villages, Inc.'s ("Petitioner") Petition for Cancellation ("Petition"). The grounds for this motion are set forth below.

A motion to dismiss for failure to state a claim concerns only one issue: the legal sufficiency of the pleaded claims. *See Advanced Cardiovascular Systems Inc. v. SciMed Life Systems Inc.*, 988 F.2d 1157, 26 USPQ2d 1038, 1041 (Fed. Cir. 1993). To survive a motion to dismiss, a petition must "state a claim to relief that is plausible on its face. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 570 (2007). In particular, the petitioner must allege well-pleaded factual matter and more than "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555).

In this proceeding, Petitioner failed to allege even threadbare recitals of elements of a cause of action which could support its petition to cancel. Indeed, Petitioner's Petition contains only two lone allegations:

1. Urban Villages is a successful real estate development and property management company out of Denver Colorado that focuses on long-term value generation through place-oriented design and detail-oriented operations that implement the highest standards for planning, design, development, and management.

2. On October 14, 2015, Urban Villages filed a federal trademark application for the mark URBAN VILLAGES for use with project management for planning design in Class 35, real estate management services in Class 36, real estate development in Class 37 and concierge services in Class 45 under Intent to Use Application Serial Number 86/788,139 (the "Urban Villages Mark").

Apart from describing Petitioner's business and the trademark application that Petitioner filed for the URBAN VILLAGES trademark, Petitioner states no grounds for the petition, and develops no elements for a cause of action supporting its Petition. Nor does Petitioner plead any facts whatsoever regarding Respondent and/or the Respondent's trademark registration at issue in this proceeding. Thus, the Petition is insufficient and must be dismissed. *Twombly*, 550 U.S. at 570.

While the Board, for purposes of a motion to dismiss, must accept all well-pleaded allegations as true, and must draw reasonable inferences in petitioner's favor, the Board is “not required to indulge in unwarranted inferences in order to save a complaint from dismissal.” *Juniper Networks Inc. v. Shipley*, 98 USPQ2d 1491 (Fed. Cir. 2011) citing *Metzler Inv. GmbH v. Corinthian Colls., Inc.*, 540 F.3d 1049, 1064-65 (9th Cir. 2008). Here, to save the Petition, the Board would have to draw more than reasonable inferences – it would

have to guess Petitioner's entire cause of action and possible factual allegations that could support such a cause of action. Because Petitioner has failed to state a claim upon which relief may be granted, it must be dismissed. *Twombly*, 550 U.S. at 570.

Dated: September 12, 2016.

s/ Melinda S. Giftos

Melinda S. Giftos

Wisconsin State Bar No. 1056609

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing MOTION TO DISMISS was sent via first class, postage paid mail to Applicant's attorney, Jessie L. Pellant, Brownstein Hyatt Farber Schreck, LLP, 410 17th Street, Suite 2200, Denver, CO 80202, on September 12, 2016.

Dated: September 12, 2016.

s/ Melinda S. Giftos

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